

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY WILLIAM DEDEKER,
Petitioner,
v.
STUART SHERMAN,
Respondent.

No. 2:20-cv-02056-KJM-EFB P

FINDINGS AND RECOMMENDATIONS
THAT THE PETITION BE DENIED

Petitioner, proceeding *pro se*, brings an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He was charged and convicted in the Nevada County Superior Court of: (1) sodomy of a child 10 years old or younger (Pen. Code §288.7, subd. (a)); (2) oral copulation with a child 10 years old or younger (§288.7, subd. (b)); (3) two counts of lewd or lascivious acts upon a child under 14 years old (§288, subd. (a)); and (4) sodomy of a child under fourteen years old (§286 subd. (c)(1)).

His habeas petition raises one claim of ineffective assistance of counsel. He contends that counsel should have investigated and presented evidence that the victim's mother, "S.L.," had a prior conviction for making a false accusation of sexual assault. ECF No. 26 at 4. Respondent has filed an answer, ECF No. 32, and petitioner has declined to file a traverse.

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1 For the reasons stated below, the court recommends that the petition be denied.

2 FACTUAL BACKGROUND

3 The following summation of the facts is quoted from the state appellate court's decision
4 on direct appeal. The court has reviewed the record and finds the appellate court's decision to be
5 consistent therewith.

6 A. Prosecution Case

7 Stormie Lunderville met appellant in 2006 and the two started dating.
8 (1 RT 131.) At the time, Lunderville had two children, including
9 Sebastian L. who was three years old.¹ (1 RT 129-130.) Soon after,
10 Lunderville, Sebastian L., appellant, and appellant's children,
11 including his daughter Taylor, moved into a house together on
12 Deerfield Drive in Truckee, California. (1 RT 131-132.)

13 According to Lunderville, appellant was primarily responsible for
14 disciplining the children because it was difficult for her to do. (1 RT
15 177.) Appellant disciplined the children by talking to them, yelling
16 at them, putting them in a corner, and spanking them "every once in
17 a while" with his hand. (1 RT 134, 178.) Sebastian L. recalled that
18 more than a dozen times, appellant disciplined him by hitting him on
19 his "butt" with a belt. (2 RT 244, 246.)

20 According to Sebastian L., he was six years old the first time
21 appellant sodomized him.² (2 RT 247.) Sebastian L. was showering
22 in an upstairs bathroom, which was used primarily by him and
23 Taylor, when appellant entered the bathroom and undressed
24 completely. (1 RT 140; 2 RT 247, 250.) Appellant got into the
25 shower with Sebastian L. and asked Sebastian L. to wash appellant's
26 back. (2 RT 247, 250.) Sebastian L. washed appellant's back as
27 asked. (2 RT 250.) Afterwards, both Sebastian L. and appellant
28 stepped out of the shower and began to dry themselves off. (2 RT
29 252.) According to Sebastian L., appellant sat down on the bathroom
30 floor and began stroking his own penis. (2 RT 255.) Appellant told
31 Sebastian L. to sit down and Sebastian L. sat down on the floor in
32 front of appellant. (2 RT 256.) Appellant then put his penis into
33 Sebastian L.'s mouth. (2 RT 256.) Appellant moved himself back
34 and forth and moved Sebastian L.'s head back and forth while
35 appellant's penis was in Sebastian L.'s mouth. (2 RT 257-258.)
36 According to Sebastian L., appellant was "trying to . . . ejaculate." (2
37 RT 257.) Once appellant ejaculated into Sebastian L.'s mouth,
38 Sebastian L. spit in a trash can and sat back down in front of
39 appellant. (2 RT 258-259.)

40 ¹ [footnote 2 in original text] Sebastian does not share a last name with Lunderville and
41 respondent will refer to him as Sebastian L. (1 RT 129.)

42 ² [footnote 3 in original text] Sebastian L. was 15 years old at the time of the March 2018
43 jury trial. (2 RT 234.)

1 Once Sebastian L. sat back down, appellant told him to turn around.
2 (2 RT 259.) When Sebastian L. turned around, appellant “put his
3 penis into [Sebastian L.’s] back side.” (2 RT 259.) Sebastian L. felt
4 pain as appellant moved “back and forth, trying to ejaculate in
5 [Sebastian L.’s] back side.” (2 RT 260.) According to Sebastian L.,
6 appellant ejaculated a second time. (2 RT 260.) After appellant
7 ejaculated, both he and Sebastian L. got dressed and exited the
8 bathroom. (2 RT 260.) The following day, Sebastian L. told his
9 mother what had happened but she acted like she did not believe him.
10 (2 RT 263.)

11 As Lunderville recalled the day of the incident, she heard Sebastian
12 L.’s shower running when she woke up. (1 RT 139-140.) Lunderville
13 knew Taylor was not at home and she did not see appellant or
14 Sebastian L. anywhere else in the house. (1 RT 138.) Lunderville
15 knocked on Sebastian L.’s bathroom door and asked who was inside.
16 (1 RT 141.) Appellant responded that he and Sebastian L. were
17 inside and would come out in a minute. (1 RT 141-142.) Lunderville
18 found it “odd” that appellant was in the bathroom with Sebastian L.
19 because there was another bathroom in the house that appellant could
20 have used. (1 RT 143.)

21 Lunderville saw Sebastian L. after he came out of the bathroom. (1
22 RT 142.) When she asked him what happened in the bathroom,
23 Sebastian L. told her he fell on the floor. (2 RT 267.) Appellant also
24 told Lunderville that Sebastian L. had fallen while in the bathroom.
25 (1 RT 211.) Lunderville and appellant argued for an unrelated reason,
26 and she and Sebastian L. subsequently moved out of the house for
27 about two months. (1 RT 144, 149.) According to Lunderville, during
28 this two-month period, Sebastian L. told Lunderville that appellant
“tried to wash him” but did not give her any other details about what
had happened in the bathroom. (1 RT 146.) Lunderville called
appellant and asked him what had happened between him and
Sebastian L. in the bathroom. (1 RT 147.) According to Lunderville,
appellant did not tell her what had happened. (1 RT 147.) Lunderville
decided she and Sebastian L. would return to live with
appellant because he denied that anything inappropriate happened in
the bathroom, he promised Lunderville that he would “be a better
dad,” Lunderville “wanted a family back,” and Sebastian L. was not
doing well at his new school. (1 RT 150, 184.) Lunderville also
hoped appellant would not do anything to Sebastian L. again. (1 RT
152.)

29 Appellant sodomized Sebastian L. a second time in April 2016 when
30 Sebastian L. was 13 years old. (2 RT 269-270.) According to
31 Sebastian L., one day he asked appellant, “[W]hy does a penis get
32 hard . . . [?]” (2 RT 270.) In response, appellant “explained it like a
33 parent.” (2 RT 270.) The following day, appellant came into
34 Sebastian L.’s bedroom with a condom. (2 RT 270.) At the time,
35 Sebastian L.’s “thing was hard” and appellant “tried to put the
36 condom on [Sebastian L.]” (2 RT 270.) According to Sebastian L.,
37 the condom did not fit so appellant put the condom on his own penis.
38 (2 RT 272.) Appellant “stroke[d] his dick and then he ejaculate[d]”
39 in front of Sebastian L. (2 RT 273.) Appellant then told Sebastian L.
40 to pull down his own pants. (2 RT 275.) When Sebastian L. did so,

1 appellant “put his dick into [Sebastian L.’s] rear again.” (2 RT 275.)
2 According to Sebastian L., this lasted for a few minutes after which
3 appellant left Sebastian L.’s room. (2 RT 276-277.) Appellant told
4 Sebastian L. not to tell Lunderville about what happened. (2 RT 278.)
5

6 The following day, while appellant and Sebastian L. were driving
7 home from Reno, appellant showed Sebastian L. photos of naked
8 women on appellant’s cell phone. (2 RT 277, 280, 334.) Appellant
9 told Sebastian L. to masturbate. (2 RT 277, 280-281, 334.) Appellant
10 then offered to buy Sebastian L. a new cell phone if Sebastian L.
11 masturbated. (2 RT 282, 329.) Sebastian L. masturbated in the car
12 until appellant told him to stop. (2 RT 281.) Appellant told Sebastian L.
13 not to tell anyone about what happened. (2 RT 282.)
14

15 The following week, when Sebastian L. went with his mother to her
16 counseling appointment, Sebastian L. told his mother that appellant
17 “had bribed [him] to masturbate and that [appellant] had tried to put
18 a condom on [Sebastian L.].” (1 RT 162, 195; 2 RT 285.) Lunderville
19 recalled Sebastian L. telling her that appellant showed him pictures
20 of “naked people” and condoms and bribed him with a cell phone. (1
21 RT 165, 196.) When Lunderville and Sebastian L. returned home,
22 Lunderville confronted appellant about showing Sebastian L. “naked
23 people” and appellant initially denied having done so. (1 RT 165-
24 166; 2 RT 288-290.) Lunderville was upset because although she
25 had asked appellant to discuss erections with Sebastian L., she did
26 not authorize appellant to also discuss masturbation. (1 RT 164, 200,
27 204.) At some point however, appellant apologized for talking to
28 Sebastian L. about masturbation and for showing Sebastian L. videos
of men and women having sex. (1 RT 205.)

1 After a week, Lunderville became “tired of not getting the truth”
2 from appellant about what happened with Sebastian L., so she and
3 Sebastian L. moved out. (1 RT 166; 2 RT 290.) She told Kaitlin
4 Dodson, appellant’s brother’s girlfriend, that she and Sebastian L.
5 were leaving and not coming back and she then took Sebastian L. to
6 the police station to give a statement. (1 RT 166-167.)
7

8 On May 11, 2016, Sebastian L. was interviewed by a “forensic
9 interview child specialist.” (2 RT 364-365, 369.) Sergeant Lisa
10 Madden of the Truckee Police Department watched Sebastian L.’s
11 forensic interview. (2 RT 368.) Sergeant Madden also arranged and
12 listened to a pre-textual phone call between Lunderville and
13 appellant. (2 RT 382, 392.) During this call, appellant admitted that
14 he had twice seen Sebastian L. masturbating. (2 RT 392.)
15

16 The next day, Sergeant Madden interviewed appellant. (2 RT 366.)
17 During the interview, appellant denied allegations of sexual abuse.
18 (2 RT 366.) In Sergeant Madden’s “training and experience,” it was
19 “very common” for suspects to deny allegations of sexual abuse, so
20 Sergeant Madden looked for “inconsistencies” in appellant’s
21 statement. (2 RT 367.) One such inconsistency was that appellant
22 denied that he had ever seen Sebastian L. masturbate but later
23 admitted that he had in fact seen Sebastian L. masturbate on multiple
24 occasions. (2 RT 376.)
25

B. Defense Case

Appellant's mother, Nina Dedeker, testified on his behalf. Mrs. Dedeker saw appellant discipline the children but never saw him use a belt to do so. (2 RT 418.) Mrs. Dedeker had known Lunderville for approximately 13 years. (2 RT 399.) On one occasion, Lunderville told Mrs. Dedeker that housework was completed when in fact it was not. (2 RT 405-406.) This made Mrs. Dedeker question Lunderville's credibility. (2 RT 403.)

Dodson also testified on appellant's behalf. (2 RT 422.) For five and a half years, Dodson lived in the house with appellant, Lunderville, and Sebastian L. (2 RT 422.) Dodson never saw appellant say "mean things" to the children living in the house or hit them with a belt. (2 RT 443.) On one occasion, Sebastian L. admitted to Dodson that he had lied to her about something because Lunderville asked him to do so. (2 RT 429.) A few days before appellant was arrested, Lunderville told Dodson that Lunderville "was going to go to the police the next day and file charges against [appellant] saying that he touched Sebastian." (2 RT 434.)

Lisa Heinzenrader, appellant's aunt, described appellant as fun-loving and caring. (2 RT 461-462.) According to Heizenrader, appellant and Sebastian L. got along well and it was not consistent with appellant's character to hit children with a belt. (2 RT 470.)

Robert Johnson had known appellant since 1994. (3 RT 536.) Johnson's wife, Ashley Johnson, had known appellant for six and a half years. (3 RT 527.) The Johnsons saw appellant, Lunderville, and Sebastian L. at holiday and family gatherings. (3 RT 528.) Mr. Johnson believed that appellant and Sebastian L. had a good relationship. (3 RT 541-542, 545.) Neither of the Johnsons saw Sebastian L. act as though he feared appellant. (3 RT 495, 542.)

C. Rebuttal Case

On October 6, 2007, Officer Mark Victors and a Child Protection Services representative spoke with Sebastian L. and Taylor. (3 RT 521-522.) Sebastian L., four years old at the time, said that appellant disciplined both children by hitting them with a belt. (3 RT 522.)

ECF No. 33-6 at 12-17.

STANDARDS GOVERNING HABEAS RELIEF UNDER THE AEDPA

I. Applicable Statutory Provisions

28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), provides in relevant part as follows:

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1 (d) An application for a writ of habeas corpus on behalf of a person
2 in custody pursuant to the judgment of a state court shall not be
3 granted with respect to any claim that was adjudicated on the merits
4 in State court proceedings unless the adjudication of the claim -

5 (1) resulted in a decision that was contrary to, or involved
6 an unreasonable application of, clearly established Federal
7 law, as determined by the Supreme Court of the United
8 States; or

9 (2) resulted in a decision that was based on an unreasonable
10 determination of the facts in light of the evidence presented
11 in the State court proceeding.

12 Section 2254(d) constitutes a “constraint on the power of a federal habeas court to grant a
13 state prisoner’s application for a writ of habeas corpus.” *(Terry) Williams v. Taylor*, 529 U.S.
14 362, 412 (2000). It does not, however, “imply abandonment or abdication of judicial review,” or
15 “by definition preclude relief.” *Miller El v. Cockrell*, 537 U.S. 322, 340 (2003). If either prong
16 (d)(1) or (d)(2) is satisfied, the federal court may grant relief based on a de novo finding of
17 constitutional error. *See Frantz v. Hazey*, 533 F.3d 724, 736 (9th Cir. 2008) (en banc).

18 The statute applies whenever the state court has denied a federal claim on its merits,
19 whether or not the state court explained its reasons. *Harrington v. Richter*, 562 U.S. 86, 99-100
20 (2011). State court rejection of a federal claim will be presumed to have been on the merits
21 absent any indication or state law procedural principles to the contrary. *Id.* at 784-785 (citing
22 *Harris v. Reed*, 489 U.S. 255, 265 (1989) (presumption of a merits determination when it is
23 unclear whether a decision appearing to rest on federal grounds was decided on another basis)).
24 “The presumption may be overcome when there is reason to think some other explanation for the
25 state court’s decision is more likely.” *Id.* at 785.

26 A. **“Clearly Established Federal Law”**

27 The phrase “clearly established Federal law” in § 2254(d)(1) refers to the “governing
28 legal principle or principles” previously articulated by the Supreme Court. *Lockyer v. Andrade*,
538 U.S. 63, 71 72 (2003). Only Supreme Court precedent may constitute “clearly established
Federal law,” but courts may look to circuit law “to ascertain whether...the particular point in
issue is clearly established by Supreme Court precedent.” *Marshall v. Rodgers*, 569 U.S. 58, 64
(2013).

1 B. “Contrary To” Or “Unreasonable Application Of” Clearly Established
 2 Federal Law

3 Section 2254(d)(1) applies to state court adjudications based on purely legal rulings and
 4 mixed questions of law and fact. *Davis v. Woodford*, 384 F.3d 628, 637 (9th Cir. 2003). The two
 5 clauses of § 2254(d)(1) create two distinct exceptions to AEDPA’s limitation on relief. *Williams*,
 6 529 U.S. at 404-05 (the “contrary to” and “unreasonable application” clauses of (d)(1) must be
 7 given independent effect, and create two categories of cases in which habeas relief remains
 8 available).

9 A state court decision is “contrary to” clearly established federal law if the decision
 10 “contradicts the governing law set forth in [the Supreme Court’s] cases.” *Id.* at 405. This
 11 includes use of the wrong legal rule or analytical framework. “The addition, deletion, or
 12 alteration of a factor in a test established by the Supreme Court also constitutes a failure to apply
 13 controlling Supreme Court law under the ‘contrary to’ clause of the AEDPA.” *Benn v. Lambert*,
 14 283 F.3d 1040, 1051 n.5 (9th Cir. 2002). *See, e.g.*, *Williams*, 529 U.S. at 391, 393 95 (Virginia
 15 Supreme Court’s ineffective assistance of counsel analysis “contrary to” *Strickland*³ because it
 16 added a third prong unauthorized by *Strickland*); *Crittenden v. Ayers*, 624 F.3d 943, 954 (9th Cir.
 17 2010) (California Supreme Court’s *Batson*⁴ analysis “contrary to” federal law because it set a
 18 higher bar for a prima facie case of discrimination than established in *Batson* itself); *Frantz*, 533
 19 F.3d at 734 35 (Arizona court’s application of harmless error rule to *Fareta*⁵ violation was
 20 contrary to U.S. Supreme Court holding that such error is structural). A state court also acts
 21 contrary to clearly established federal law when it reaches a different result from a Supreme Court
 22 case despite materially indistinguishable facts. *Williams*, 529 U.S. at 406, 412 13; *Ramdass v.*
 23 *Angelone*, 530 U.S. 156, 165-66 (2000) (plurality op’n).

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 26 ³ *Strickland v. Washington*, 466 U.S. 668 (1984).

27 ⁴ *Batson v. Kentucky*, 476 U.S. 79 (1986).

28 ⁵ *Fareta v. California*, 422 U.S. 806 (1975).

1 A state court decision “unreasonably applies” federal law “if the state court identifies the
 2 correct rule from [the Supreme Court’s] cases but unreasonably applies it to the facts of the
 3 particular state prisoner’s case.” *Williams*, 529 U.S. at 407 08. It is not enough that the state
 4 court was incorrect in the view of the federal habeas court; the state court decision must be
 5 objectively unreasonable. *Wiggins v. Smith*, 539 U.S. 510, 520 21 (2003). This does not mean,
 6 however, that the § (d)(1) exception is limited to applications of federal law that “reasonable
 7 jurists would all agree is unreasonable.” *Williams*, 529 U.S. at 409 (rejecting Fourth Circuit’s
 8 overly restrictive interpretation of “unreasonable application” clause). State court decisions can
 9 be objectively unreasonable when they interpret Supreme Court precedent too restrictively, when
 10 they fail to give appropriate consideration and weight to the full body of available evidence, and
 11 when they proceed on the basis of factual error. *See, e.g., Williams*, 529 U.S. at 397-98; *Wiggins*,
 12 539 U.S. at 526 28 & 534; *Rompilla v. Beard*, 545 U.S. 374, 388 909 (2005); *Porter v.*
 13 *McCollum*, 558 U.S. 30, 42 (2009).

14 The “unreasonable application” clause permits habeas relief based on the application of a
 15 governing principle to a set of facts different from those of the case in which the principle was
 16 announced. *Lockyer*, 538 U.S. at 76. AEDPA does not require a nearly identical fact pattern
 17 before a legal rule must be applied. *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007). Even a
 18 general standard may be applied in an unreasonable manner. *Id.* In such cases, AEDPA
 19 deference does not apply to the federal court’s adjudication of the claim. *Id.* at 948.

20 Review under § 2254(d) is limited to the record that was before the state court. *Cullen v.*
 21 *Pinholster*, 563 U.S. 170, 180-81 (2011). The question at this stage is whether the state court
 22 reasonably applied clearly established federal law to the facts before it. *Id.* In other words, the
 23 focus of the § 2254(d) inquiry is “on what a state court knew and did.” *Id.* at 1399.

24 Where the state court’s adjudication is set forth in a reasoned opinion, § 2254(d)(1) review
 25 is confined to “the state court’s actual reasoning” and “actual analysis.” *Frantz*, 533 F.3d at 738
 26 (emphasis in original). A different rule applies where the state court rejects claims summarily,
 27 without a reasoned opinion. In *Harrington, supra*, the Supreme Court held that when a state court
 28 denies a claim on the merits but without a reasoned opinion, the federal habeas court must

1 determine what arguments or theories may have supported the state court's decision, and subject
2 those arguments or theories to § 2254(d) scrutiny. *Harrington*, 562 U.S. at 101-102.

3 C. “Unreasonable Determination of The Facts”

4 Relief is also available under AEDPA where the state court predicated its adjudication of
5 a claim on an unreasonable factual determination. Section 2254(d)(2). The statute explicitly
6 limits this inquiry to the evidence that was before the state court.

7 Even factual determinations that are generally accorded heightened deference, such as
8 credibility findings, are subject to scrutiny for objective reasonableness under § 2254(d)(2). For
9 example, in *Miller El v. Dretke*, 545 U.S. 231 (2005), the Supreme Court ordered habeas relief
10 where the Texas court had based its denial of a *Batson* claim on a factual finding that the
11 prosecutor's asserted race neutral reasons for striking African American jurors were true.
12 *Miller El*, 545 U.S. at 240.

13 An unreasonable determination of facts exists where, among other circumstances, the
14 state court made its findings according to a flawed process – for example, under an incorrect
15 legal standard, or where necessary findings were not made at all, or where the state court failed to
16 consider and weigh relevant evidence that was properly presented to it. *See Taylor v. Maddox*,
17 366 F.3d 992, 999 1001 (9th Cir.), cert. denied, 543 U.S. 1038 (2004). Moreover, if “a state
18 court makes evidentiary findings without holding a hearing and giving petitioner an opportunity
19 to present evidence, such findings clearly result in a ‘unreasonable determination’ of the facts”
20 within the meaning of § 2254(d)(2). *Id.* at 1001; accord *Nunes v. Mueller*, 350 F.3d 1045, 1055
21 (9th Cir. 2003) (state court's factual findings must be deemed unreasonable under section
22 2254(d)(2) because “state court . . . refused Nunes an evidentiary hearing” and findings
23 consequently “were made without . . . a hearing”), *cert. denied*, 543 U.S. 1038 (2004); *Killian v.*
24 *Poole*, 282 F.3d 1204, 1208 (9th Cir. 2002) (“state courts could not have made a proper
25 determination” of facts because state courts “refused Killian an evidentiary hearing on the
26 matter”), *cert. denied*, 537 U.S. 1179 (2003).

27 A state court factual conclusion can also be substantively unreasonable where it is not
28 fairly supported by the evidence presented in the state proceeding. *See, e.g., Wiggins*, 539 U.S.

1 at 528 (state court's "clear factual error" regarding contents of social service records constitutes
 2 unreasonable determination of fact); *Green v. LaMarque*, 532 F.3d 1028 (9th Cir. 2008) (state
 3 court's finding that the prosecutor's strike was not racially motivated was unreasonable in light
 4 of the record before that court); *Bradley v. Duncan*, 315 F.3d 1091, 1096 98 (9th Cir. 2002) (state
 5 court unreasonably found that evidence of police entrapment was insufficient to require an
 6 entrapment instruction), *cert. denied*, 540 U.S. 963 (2003).

7 II. The Relationship of § 2254(d) to Final Merits Adjudication

8 To prevail in federal habeas proceedings, a petitioner must establish the applicability of
 9 one of the § 2254(d) exceptions and also must also affirmatively establish the constitutional
 10 invalidity of his custody under pre AEDPA standards. *Frantz v. Hazey*, 533 F.3d 724 (9th Cir.
 11 2008) (en banc). There is no single prescribed order in which these two inquiries must be
 12 conducted. *Id.* at 736 37. The AEDPA does not require the federal habeas court to adopt any one
 13 methodology. *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003).

14 In many cases, § 2254(d) analysis and direct merits evaluation will substantially overlap.
 15 Accordingly, "[a] holding on habeas review that a state court error meets the ' 2254(d) standard
 16 will often simultaneously constitute a holding that the [substantive standard for habeas relief] is
 17 satisfied as well, so no second inquiry will be necessary." *Frantz*, 533 F.3d at 736. In such cases,
 18 relief may be granted without further proceedings. *See, e.g., Goldyn v. Hayes*, 444 F.3d 1062,
 19 1070 71 (9th Cir. 2006) (finding § 2254(d)(1) unreasonableness in the state court's conclusion
 20 that the state had proved all elements of the crime, and granting petition); *Lewis v. Lewis*, 321
 21 F.3d 824, 835 (9th Cir. 2003) (finding § 2254(d)(1) unreasonableness in the state court's failure
 22 to conduct a constitutionally sufficient inquiry into a defendant's jury selection challenge, and
 23 granting petition); *Williams v. Ryan*, 623 F.3d 1258 (9th Cir. 2010) (finding § 2254(d)(1)
 24 unreasonableness in the state court's refusal to consider drug addiction as a mitigating factor at
 25 capital sentencing, and granting penalty phase relief).

26 In other cases, a petitioner's entitlement to relief will turn on legal or factual questions
 27 beyond the scope of the § 2254(d) analysis. In such cases, the substantive claim(s) must be
 28 separately evaluated under a de novo standard. *Frantz*, 533 F.3d at 737. If the facts are in dispute

1 or the existence of constitutional error depends on facts outside the existing record, an evidentiary
2 hearing may be necessary. *Id.* at 745; *see also Earp*, 431 F.3d 1158 (remanding for evidentiary
3 hearing after finding § 2254(d) satisfied).

4 DISCUSSION

5 As stated above, petitioner argues that his counsel was ineffective in failing to present
6 evidence that the mother of the victim had a prior conviction for making a false sexual assault
7 allegation.

8 I. Last Reasoned Decision

9 This claim was raised in a habeas petition before the state superior court and rejected:

10 In his petition Dedeker asserts that his appointed trial counsel was
11 ineffective because he elected not to attack the credibility of the
12 mother of the child victim with information that she had previously
13 made false accusations of being raped, and that she had not been
14 truthful about an incident in which other children at the home she
15 shared with Dedeker had been shot with an airsoft gun. Dedeker's
16 appointed trial counsel, Deputy Public Defender David Humphreys,
17 submitted a declaration filed with Dedeker's petition. In his
18 declaration, DPD Humphreys, an attorney with more than four
19 decades of experience as a public defender, stated that he was aware
20 of the false rape allegations, but made the tactical choice not to raise
21 that issue to attack Ms. Lunderville's veracity at trial because Ms.
22 Lunderville's testimony about how she learned from her son of his
23 claims of having been molested by Dedeker was neither assailable
24 nor material to the case against Dedeker. DPD Humphreys further
25 stated that he elected not to focus on the airsoft gun incident because
26 he determined that attacking Ms. Lunderville's conduct of staying in
27 a relationship with Dedeker after she became aware of the
28 child/victim's allegations of being molested by Dedeker was "a
better approach to attack her credibility."

The Court invited informal responses from both the Nevada County District Attorney and the Nevada County Public Defender. The District Attorney filed its informal response on May 17, 2019. The Nevada County Public Defender did not file an informal response. Dedeker's time to file his reply to that informal response expired on June 7, 2019. The court having read those pleadings, and having taken notice of its own file in the trial of this matter, the petition for writ of habeas corpus will be DENIED for the reasons set forth below.

25 Discussion
26

27 Our Supreme Court in *People v. Pope* (1979) 23 Cal.3d 412 and
28 *People v. Wilson* (1992) 3 Cal.4th 926 described this court's proper
role in these proceedings as follows: "[W]hen the record on appeal
does not illuminate the basis for the attorney's challenged acts or

1 omissions, a claim of ineffective assistance of counsel is more
 2 appropriately made in a habeas corpus proceeding, in which the
 3 attorney has the opportunity to explain the reasons for his or her
 4 conduct. ‘Having afforded the trial attorney an opportunity to
 5 explain, courts are in a position to intelligently evaluate whether
 6 counsel’s acts or omissions were within the range of reasonable
 7 competence.’’ *Wilson*, 3 Cal.4th at 936.

8 Dedeker bears the burden in these proceedings to show that DPD
 9 Humphreys failed to act in a manner that would be expected of a
 10 reasonably competent attorney acting as a diligent advocate, and that
 11 it is reasonably probable that a more favorable determination for
 12 Dedeker would have resulted absent the challenged acts or failures
 13 to act. *People v. Lewis* (1990) 50 Cal.3d 262, 288. Dedeker fails to
 14 satisfy either prong of that analysis to establish a viable claim of
 15 ineffective assistance of counsel (“IAC”).

16 “A court reviewing the conduct of counsel must in hindsight give
 17 great deference to counsel’s tactical decisions.” *People v. Holt*
 18 (1997) 15 Cal.4th 619, 703. “[W]e assess both the reasonableness of
 19 the decisions and the reasonableness of the investigation that
 20 underlay each decision.” *In re Thomas* (2006) 37 Cal.4th 1249, 1258.

21 Here, DPD Humphreys was aware through his investigation of the
 22 information now seized upon by Dedeker in these writ proceedings
 23 that might have been used to further impeach the mother of the
 24 child/victim, Ms. Lunderville, at trial. The investigation appears to
 25 have been adequate and reasonable.

26 DPD Humphreys elected to use other available information to assail
 27 Ms. Lunderville’s veracity and the quality of her motherhood:
 28 information that DPD Humphreys evaluated to be more likely to
 29 damage Ms. Lunderville’s credibility before the jury. That tactical
 30 decision was well within the range of reasonable choices that could
 31 have been made by a competent and experienced attorney according
 32 to prevailing professional norms. Consequently, Dedeker’s claim to
 33 IAC founders on that first prong of the analysis.

34 As to the second prong, Dedeker fails to connect his argument that
 35 additional impeachment of Ms. Lunderville would somehow have
 36 created a probability that a reasonable juror or jurors would have
 37 concluded that the victim who testified about the serial abuse by
 38 Dedeker in this trial did so untruthfully. As the District Attorney
 39 observed in its informal response, this case did not turn on the

40 testimony of Ms. Lunderville. The case turned instead on the
 41 believability of the child victim.

42 Nothing in the information that Dedeker now raises as to Ms.
 43 Lunderville involved claims that Ms. Lunderville coerced her child
 44 to lie on her behalf. The information would instead impeach
 45 Lunderville on collateral matters, when the subject of her testimony
 46 was peripheral to the issues on which any competent defense attorney
 47 would have thought the case would turn. As the impeachment
 48 testimony about Ms. Lunderville bore no connection to the

1 child/victim, no reasonable juror could have reasonably relied on that
2 information to assail the veracity of testimony at trial by the
3 child/victim. Consequently, a more favorable result for Dedeker does
4 not inhere from a decision to utilize that information to further
impeach Ms. Lunderville, and Dedeker cannot meet the second prong
of the analysis to establish a valid claim of IAC.

5 Conclusion

6 On this record Dedeker has failed to meet his burden to establish that
7 the tactical choices made by DPD Humphreys fell outside the scope
8 of those expected of a reasonable attorney under prevailing
professional norms, and Dedeker has failed to establish that a
probable more favorable result would have come from the use of the
additional information to further impeach Ms. Lunderville at trial.

9 ECF No. 33-12 at 2-5. This claim was raised again before the California court of appeal, ECF
10 No. 33-13, and the California Supreme Court, ECF No. 33-15. Both courts issued summary
11 denials of the claim, leaving the superior court's rejection as the last reasoned decision. ECF
12 Nos. 33-14 & 33-16.

13 II. Clearly Established Federal Law

14 The clearly established federal law governing ineffective assistance of counsel claims is
15 that set forth by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). To
16 succeed on a *Strickland* claim, a defendant must show that (1) his counsel's performance was
17 deficient and that (2) the "deficient performance prejudiced the defense." *Id.* at 687. Counsel is
18 constitutionally deficient if his or her representation "fell below an objective standard of
19 reasonableness" such that it was outside "the range of competence demanded of attorneys in
20 criminal cases." *Id.* at 687-88 (internal quotation marks omitted). "Counsel's errors must be 'so
21 serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'" *Richter*, 562 at
22 104 (quoting *Strickland*, 466 U.S. at 687).

23 Prejudice is found where "there is a reasonable probability that, but for counsel's
24 unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466
25 U.S. at 694. A reasonable probability is "a probability sufficient to undermine confidence in the
26 outcome." *Id.* "The likelihood of a different result must be substantial, not just conceivable."
27 *Richter*, 562 U.S. at 112.

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III. Analysis

The superior court’s rejection of this claim was not unreasonable. It found that petitioner’s counsel had adequately investigated the victim’s mother’s prior conviction, but chose to attack her credibility with other evidence. As respondent points out, such tactical decisions made after a thorough investigation of the law and the facts are “virtually unchallengeable.” *Strickland*, 466 U.S. at 690-691. And petitioner has offered no counterargument to the superior court’s conclusion that it was the victim’s testimony, not his mother’s, that undergirded his convictions. Thus, he has failed to show that the failure to present the prior conviction evidence would have changed the outcome of his trial.

CONCLUSION

For the reasons explained above, the state courts' denial of petitioner's claims was not objectively unreasonable within the meaning of 28 U.S.C. § 2254(d). Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of habeas corpus be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(1). Within twenty-one days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections, he shall also address whether a certificate of appealability should issue and, if so, why and as to which issues. *See* 28 U.S.C. § 2253(c)(2). Any reply to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order.

Dated: June 15, 2022.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE